

## **QUESTIONS AND ANSWERS ADR PROGRAM**

**1. What is the Court's new "Alternative Dispute Resolution" (ADR) Program?**

The Board of Judges has approved new Local Rule of Practice 16.2 that requires parties involved in civil actions (except social security cases and cases that involve prisoners) to agree upon a form of ADR as part of the litigation process.

**2. What are the ADR processes?**

The three processes available through the Court are: mediation, early neutral evaluation and arbitration.

**3. What is mediation?**

Mediation refers to a process in which an impartial neutral, selected by the parties, facilitates negotiations between the parties to help reach a mutually acceptable agreement.

**4. What is Early Neutral Evaluation (ENE)?**

ENE is a process wherein an impartial attorney with subject matter expertise, selected by the parties, provides a non-binding evaluation of the case and is available to assist the parties in reaching agreement.

**5. What if we choose ENE and then, as a result of the evaluation, would like the evaluator to serve as a mediator?**

The parties can make arrangement directly with the evaluator to engage him/her in the additional role of mediator. To the extent this development results in the need for additional time, the parties can request limited additional time from the Court to complete the process.

**6. Is arbitration the same as that offered by the court in the past?**

Arbitration involves referral of the case to an impartial third party (or a panel of three) for a non-binding determination in settlement of the claim(s) following the presentation of evidence and arguments. The Court will be developing a new list of arbitrators. However, unlike other neutrals, they will be paid by the court for their services. The parties are also free to engage a private arbitration company or arbitrator.

**7. Can we use other forms of ADR, such as summary trials?**

The policies and procedures provide for other forms of ADR, including summary trials and special masters.

**8. How does this program help litigants?**

The Court expects that this ADR program will expedite the resolution of cases and also reduce the costs of litigation for clients.

**9. Are there lawyers available to assist *pro se* litigants?**

The Court is developing a program to make lawyers available to counsel *pro se* litigants using the ADR process.

**10. What is the “Pilot”?**

The Pilot of the ADR program is expected to start in June 2006 and will involve all cases filed after that date, assigned to the following four judges: Ambrose, Cercone, Hardiman and Schwab. The idea is to “test” the system and determine what, if any, of the practices and procedures should be changed and improved.

**11. Who will pay for the ADR program selected?**

The cost generally will be shared among or between the parties, except for Arbitration. The Court will continue to pay arbitrators. Indigent parties may ask the Court to suggest that the other side bear costs. There may also be other options such as utilizing a Magistrate Judge or a pro bono neutral.

**12. Can the costs of an ENE or mediation be limited by setting a cap on the number of hours the evaluator or mediator can spend on the case?**

The parties are free to regulate expense by agreement. It should be noted that current Court experience shows that often the cost of a mediation is equal to or less than the cost of taking depositions for a day.

**13. Can the parties hire a neutral who is not on the Court’s approved list?**

Yes. For the convenience of litigants, the Court is providing lists of mediators, evaluators and arbitrators who met all the criteria for the ADR program as set by the Court. However, parties are free to hire any neutral upon whom all agree. NOTE: parties will be required to pay any privately retained arbitrators.

**14. How much will ADR cost?**

Rates for mediation and ENE are set by the individual mediators and evaluators. Costs vary but are generally set per hour or per day. Information about how much each individual mediator or evaluator charges is available on the Court’s web site, [www.pawd.uscourts.gov](http://www.pawd.uscourts.gov).

**15. Are judges still going to try cases?**

Of course. Some cases are simply not able to be settled and those cases will proceed to trial. Hopefully, this program will reduce the number of summary judgment motions and will enable judges to conduct trials more quickly.

**16. Are judges still going to be involved in settlement at case management conferences and at other times?**

Yes.

**17. Does the ADR process happen before, during or after discovery?**

Ideally the ADR process will happen before discovery, but after Rule 26(a)(1) disclosures. Once parties have spent substantial time and money in discovery they seem to be less amenable to settlement. There are, however, situations where some discovery must occur, such as the plaintiff’s deposition, before meaningful settlement discussions can begin. These issues are to be addressed to the judge assigned to the case and limited discovery may be allowed at his or her discretion.

**18. Can the parties conduct limited discovery?**

Yes, see Question 17 above.

**19. Who is required to attend the ADR session?**

The ADR Policies and Procedures detail who is required to attend the mediation, ENE or arbitration. Generally, a person with authority to resolve the case must be available during the ADR session.

**20. Is in-house counsel an adequate representative at a mediation or ENE for a corporate or other entity?**

If the in-house counsel meets the applicable criteria that s/he has authority to settle and is knowledgeable about the facts of the case, then s/he is an adequate representative, unless otherwise ordered.

**21. What if one of the parties does not participate in good faith?**

The program requires good faith participation. If one side has a reasonable belief that the other party is not participating in good faith, they may address this issue either to the judge assigned to the case or to the ADR Judge, who serves as the chair of the Court's Standing Committee on Case Management and ADR.

**22. Why is the emphasis on having ADR so early in the litigation process?**

The goal of the program is to help litigants towards an inexpensive and prompt resolution of their case whenever possible.

**23. How can I become a neutral?**

Once you have reviewed the Policies and Procedures for the ADR program found on the court's web site ([www.pawd.uscourts.gov](http://www.pawd.uscourts.gov)) and believe you are eligible to apply for any one or several of the categories (mediator, evaluator or arbitrator), there is an application form on the web site to complete. You will be promptly informed of the Court's action on your application.